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18 BEVERLY NUNES and the Putative Class

19
20 **IN THE UNITED STATES DISTRICT COURT**
21 **NORTHERN DISTRICT OF CALIFORNIA**

22 BEVERLY NUNES, individually and on behalf
23 of a class of similarly situated individuals,

24 Plaintiff,

25 v.

26 TWITTER, INC.,

27 Defendant.

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TWITTER, INC.

Case No: 3:14-cv-02843-VC

CLASS ACTION

[PROPOSED]
STIPULATED ORDER REGARDING
INADVERTENT PRODUCTION OF
PRIVILEGED OR OTHERWISE
PROTECTED MATERIAL

Judge: Hon. Vince Chhabria

1 The parties in the above-captioned case have agreed to a single procedure to govern the
2 inadvertent production of privileged documents in this action.

3 NOW, THEREFORE, the undersigned stipulate and agree as follows:

4 1. **Non-Waiver of Privileges**

5 1.1. This stipulation is entered pursuant to Rule 502(d) of the Federal Rules of
6 Evidence and Section 10 of the December 10, 2014 Stipulated Protective Order (Dkt. No. 47), in
7 order to allow for expeditious production of documents, and set forth the procedure to be
8 followed in the event of inadvertent production of information subject to the attorney-client
9 privilege, work-product doctrine, joint-defense or common interest privilege or any other
10 privilege or immunity from disclosure (“Privileged Material”).

11 2. In accordance with Rule 502(d), other applicable Rules, and the agreement of the
12 Parties, any production or disclosure of Privileged Material shall not be deemed to waive—in this
13 litigation or in any other federal, state, administrative, agency or other proceeding of any kind—
14 any applicable privilege or immunity (including, without limitation, the attorney-client privilege,
15 the work product privilege and the joint defense or common interest privilege) that would
16 otherwise attach to the document or information, regardless of the extent (if any) to which the
17 party producing the document or information has reviewed the document or information for
18 privilege or other protection. In no event shall the inadvertent or erroneous production, disclosure,
19 or transmission of Privileged Material form the basis for a claim that the material is not so
20 protected.

21 3. **Clawback of Inadvertent or Erroneous Disclosure**

22 3.1 If a Producing Party, or any other party purporting to hold a privilege, has a good
23 faith belief that Privileged Material has been inadvertently produced, it shall promptly notify the
24 Receiving Party in writing of its claim of privilege or protection, and specifically identify the
25 document or other material at issue (“Discovery Material”). The parties shall comply with their
26 ethical and legal obligations concerning the actual or apparent inadvertent production of
27 Privileged Material, including their obligation to promptly notify the Producing Party of such
28 inadvertent production.

1 3.2 Upon receipt of any notice claiming that Discovery Material is or includes
2 Privileged Material, the other party shall, subject to paragraph 3.3.: (i) promptly destroy the
3 Privileged Material (or redact the protected portions of the Discovery Material in the event that
4 the entire Discovery Material is not claimed or found to be protected from disclosure) and all
5 copies thereof; (ii) permanently delete any electronic versions of the Privileged Material from any
6 data source, or any database it maintains; (iii) retrieve all paper copies of the Privileged Material
7 provided to any third parties, including experts and consultants; (iv) retrieve from third parties all
8 electronic copies contained on physical storage media where practicable, or if not, direct that any
9 such electronic versions be permanently deleted; (v) destroy the portion of any notes that reveal
10 the substance of the Privileged Material; and (vi) make no further use of the Privileged Material.
11 In the event that only a portion of the Discovery Material is claimed or found to be protected from
12 disclosure, the party claiming protection shall produce a new version of all Discovery Material
13 that included the Privileged Material with such information redacted.

14 3.3 To the extent the Receiving Party disputes the claim of privilege (the “Disputing
15 Party”), the Disputing Party shall notify the Producing Party, or any other party asserting the
16 privilege, of its position (the “Dispute Notification”) within five business days of receiving the
17 notice of production of Privileged Information. Within five business days of receiving the
18 Dispute Notification, the Producing Party, or any other party purporting to hold a privilege, shall
19 either withdraw its claim of privilege or confer with the Disputing Party in an effort to resolve
20 their disagreement. If the disagreement is not resolved, the Producing Party, or any other party
21 asserting a privilege, and the Disputing Party shall file a joint letter with the Court concerning
22 this dispute and jointly request that the letter be filed under seal pursuant to Civil Local Rule 79-
23 5. While the dispute is pending and until such time as there is a final judicial determination, the
24 Receiving Party shall not use or disseminate the challenged Discovery Material for any purpose
25 other than such joint letter.

26 3.4 In the event that either (a) the Disputing Party declines to provide a Dispute
27 Notification within five days of receiving a claim of privilege or protection, or (b) the Court
28

1 determines that the Discovery Material is protected from disclosure, then the Receiving Party
2 shall follow the destruction procedures described in paragraph 3.2.

3 3.5 If, during a deposition, a party claims that a document being used in the
4 deposition (e.g., marked as an exhibit, shown to the witness, or made the subject of
5 examination) is subject to any privilege, it may at its sole election (a) allow the document to be
6 used in the deposition without waiver of its claim of privilege, or (b) consistent with Federal
7 Rule of Civil Procedure 30(c)(2), instruct the witness not to answer the questions concerning the
8 document pending a prompt resolution of any disagreement concerning the document's
9 privileged or work-product protected status. If the party allows the examination concerning the
10 document to proceed on a non-waiver basis, the parties shall sequester all copies of the
11 purportedly-Privileged Material. Promptly after the deposition, the parties will commence the
12 procedure outlined in the preceding paragraphs to address the claim of privilege or other
13 protection. Until the dispute is resolved, all parties shall treat the transcript of such deposition
14 as Confidential. If the party instructs the witness not to answer questions concerning the
15 document, the parties will then cooperate in promptly submitting the issue of the document's
16 status to the Court.

17

18 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

19 Dated: January 28, 2015

JACOBS KOLTON, CHTD.

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By: /s/ John G. Jacobs

JOHN G. JACOBS
BRYAN G. KOLTON

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Attorneys For Plaintiff
BEVERLY NUNES
and the Putative Class

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1 Dated: January 28, 2015

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WILSON SONSINI GOODRICH & ROSATI

By: /s/ David H. Kramer

DAVID H. KRAMER
TONIA OUELLETTE KLAUSNER
BRIAN M. WILLEN
JARRED O. TAYLOR III

Attorneys For Defendant
TWITTER, INC.

CERTIFICATION

2 I, David H. Kramer, am the ECF User whose identification and password are being used
3 to file this [PROPOSED] STIPULATED ORDER REGARDING INADVERTENT
4 PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED MATERIAL. In
5 compliance with Civil Local Rule 5-1(i), I hereby attest that concurrence in the filing of this
6 document has been obtained from all of the signatories.

Dated: January 28, 2015

/s/ David H. Kramer

1 PURSUANT TO STIPULATION, IT IS SO ORDERED.
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3 Dated: January 30, 2015



4 VINCE CHHABRIA
5 UNITED STATES DISTRICT JUDGE
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